

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

**BRIEF FOR APPELLANT AND
JOINT APPENDIX**

19

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 9988

ANNE J. BRADY, *Appellant*,

v.

JOSEPH A. CANTREL, MILDRED GAMES, *Appellees*.

Appeal from the United States District Court for the
District of Columbia.

*United States Court of Appeals
for the District of Columbia
Circuit*

FILED JAN 10 1949

Joseph W. Stewart
CLERK

WILLIAM B. O'CONNELL,
WILLIAM A. GALLAGHER,
Union Trust Building,
Attorneys for Appellant.

STATEMENT OF POINTS.

It is respectfully submitted that the Court below erred as follows:

1. In refusing to compensate the appellant for the money she expended on the property involved in good faith under the belief that she was the legal owner.

SUMMARY OF ARGUMENT.

The claim of the appellant is for money expended by her for taxes and repairs on the property involved. Due to the fact that the property was conveyed to her by her husband she was the holder of the legal title. The court held that the transfer was fraudulent as to Mrs. Games on the part of the deceased husband of the appellant, but that the appellant was innocent of any fraud. If the appellant had not paid the taxes and kept the property in repair there would have been nothing in the estate of the deceased husband due to the fact he had no other assets. True, she lived in the property, but it is contended that she had a right to do so as long as the title was in her name.

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 9988.

ANNE J. BRADY, *Appellant*,

v.

JOSEPH A. CANTREL, MILDRED GAMES, *Appellees*.

Appeal from the United States District Court for the
District of Columbia.

BRIEF FOR APPELLANT.

JURISDICTIONAL STATEMENT.

Jurisdiction is based on the general jurisdiction of this Court as provided in Section 17-101 D. C. Code, 1940, 41 Stat. 1312, Section 12.

This is an appeal from a judgment of the District Court which denied the claims of the appellant against the administrator, c.t.a., d.b.n. for money advanced for and on behalf of the estate of Frank J. Brady, deceased.

STATEMENT OF THE CASE.

This is a companion case to the case of *Games v. Brady, et al.*, (No. 8010) United States Court of Appeals, 76 U. S. Appeals, D. C. 47, hereinafter referred to as the *Games* case.

The facts are set forth in the memorandum opinion of Judge McGuire in the appendix. These are substantially correct, except there was no evidence to justify the statement that Brady was "putatively at least," the father of the child involved.

The District Court held the agreement between Brady and Mrs. Games to be a valid contract, and this Court affirmed that decision, *Games v. Brady, supra*. This Court also sustained the lower court in setting aside the conveyance of the real estate from Brady to his wife, though the lower court found as a fact, as did the advisory jury, that Mrs. Brady was not a party to the fraud, and had no knowledge of it.

After the decision of this Court, Mrs. Brady found herself in this position—she was living in a house that she, in good faith, had every reason to believe she owned, and had been living there for a good many years. After the property was transferred to her by her husband she paid the taxes, repairs, up-keep, and all the expenses incident to maintaining what she thought was hers. By doing this she kept the property intact. When the court set aside the conveyance to her she filed her claim in the probate court for the money that she had expended in preserving and maintaining the property, taxes, repairs, etc.

As appears from the memorandum of Judge McGuire, some of her claims were allowed, and others denied. It is from the refusal to allow the items not allowed that this appeal is taken. The list of the items claimed appears in the record and will not be repeated here. They consist mainly of taxes, repairs, improvements, and money advanced to the deceased in making the original payment on

the house, as well as money advanced to pay off the trust thereon.

After the appellant's claims had been denied she filed suit against the administrator in the District Court. When the administrator failed to answer in accordance with the rules of court, appellant took a default and, in due course and according to and in compliance with the rules of court, was awarded a judgment. No appeal was taken from this judgment, and it was not until some time later a motion was made to vacate the judgment, which was done. The vacating of this judgment is one of the assignments of error relied on by appellant. The other relates to the disallowance of her claims for money advanced and expended. In support of her claim for money advanced and expended, the appellant submitted to the court cancelled checks, receipts and vouchers, which were not questioned. The administrator relied on the statute of limitations, the fact that Mrs. Brady had lived in the house, and the further fact that the decision in the former *Games v. Brady, supra*, constituted res judicata.

It is a well established principle of law that:

“An equitable lien on the property benefited has been held to arise where a person in good faith, and under a mistake as to the condition of the title, makes improvements, renders services, or incurs expenses that are permanently beneficial to another's property. But there is no such lien where the expenditures are made with knowledge of the real state of the title, nor will such a lien arise where there is an adequate remedy at law.” (37 C. J. 321)

Admittedly, Mrs. Brady paid the taxes and made the repairs for which she filed her claim, so that the sole question is whether or not she is entitled to be reimbursed for these expenditures. The entire matter is thoroughly discussed in the memorandum filed in the court below for Judge McGuire. The matter of dower having been disposed of in his memorandum opinion, all that is left is whether or not

Mrs. Brady is entitled to be reimbursed for her expenditures.

Respectfully submitted,

WILLIAM B. O'CONNELL,
WILLIAM A. GALLAGHER,
Attorneys for Appellant.

Service of a copy of the within brief is hereby acknowledged this day of January, 1949.

Attorney for Appellees.

APPENDIX

INDEX TO JOINT APPENDIX.

	Page
Complaint for Debt	2
Default	3
Plaintiff's Motion for Final Judgment	4
Defendant's Motion to Vacate Default Judgment....	4
Plaintiff's Objections to Motion to Vacate Judgment..	4
Answer to Complaint	5
Order Vacating Default Judgment	6
Memorandum of Expenditures of Plaintiff	7
Memorandum for Mr. Justice McGuire	11
Memorandum Opinion	31
Order for Judgment	35
Notice of Appeal	36

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 9988.

ANNE J. BRADY, *Appellant*,

v.

JOSEPH A. CANTREL, MILDRED GAMES, *Appellees*.

Appeal from the United States District Court for the
District of Columbia.

JOINT APPENDIX.

1

Filed Aug 14 1946

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT
OF COLUMBIA.

HOLDING A PROBATE COURT.

Civil Action No. 36276

ANNE J. BRADY, 2900 P St., N. W., Washington, D. C.,
Plaintiff,

v.

JOSEPH A. CANTREL, Administrator, c.t.a., d.b.n., Estate of
John Francis Brady, Deceased, 729 15th St., N. W.,
Washington, D. C., *Defendant.*

Complaint for Debt

1. The amount of plaintiff's claim is in excess of One Thousand Dollars (\$1000.00) and is therefore within the jurisdiction of this Court.

2. The defendant, Joseph A. Cantrel, is the duly appointed administrator, d.b.n., c.t.a., of the estate of John Francis Brady, Deceased, who departed this life in the District of Columbia, testate, on November 6, 1936, and is sued as such. Said decedent left his last will and testament dated February 21, 1930, which will was duly admitted to probate as a will of both real and personal property in the District of Columbia, Administration No. 53,426. Letters of administration were duly issued to John Francis Brady, son of the decedent as administrator c.t.a. on June 22, 1938, and upon his removal as such the defendant herein was appointed administrator c.t.a., d.b.n.

3. The plaintiff duly probated her claim against the estate of the decedent for money expended by her in the preservation of the said estate in the sum of \$19,877.10, of which the defendant has allowed the sum of \$1059.21 and rejected the balance in the sum of \$18,817.89; that
2 since the filing of her claim she has expended an ad-

ditional sum of \$858.52 for the benefit of the said estate in taxes, repairs, bond premiums and incidentals, and the plaintiff is now bringing this Civil Action to enforce her claim aforesaid within the nine months after rejection as provided by statute in force in the District of Columbia.

Wherefore plaintiff demands from the defendant, Joseph A. Cantrel, Administrator, c.t.a., d.b.n., of the estate of John Francis Brady, deceased the sum of Nineteen Thousand Six Hundred Seventy Six and forty-one cents (\$19,676.41), besides costs.

ANNE J. BRADY
By WILLIAM B. O'CONNELL
Union Trust Building
Attorney for Plaintiff.

* * * * *

3

Filed Dec 3 1946

Default

It appearing that the above-named defendant has failed to plead or otherwise defend this action though duly served with summons and copy of the complaint on the 19th day of August, 1946, and an affidavit on behalf of the plaintiff having been filed, it is this 3rd day of December, 1946 declared that Joseph A. Cantrel, Administrator, c.t.a., d.b.n., Estate of John Francis Brady, Deceased, defendant herein is () in default.

CHARLES E. STEWART,
Clerk,
By ELEANOR E. JOBE,
Deputy Clerk.

* * * * *

4

Filed Dec 17 1946

Motion for Final Judgment

Now comes the plaintiff and moves the Court to enter a final judgment herein, a default having been entered on December 3, 1946.

WILLIAM B. O'CONNELL
Attorney for Plaintiff,

• • • • • • • • • •

5

Filed Dec 21 1946

Motion to Vacate Default Judgment

Comes now the defendant in the above entitled cause and moves this Court to vacate and set aside the default judgment entered against the defendant in this cause on the 3rd day of December, 1946. Attached to this motion is a copy of the Answer filed in this cause by the defendant, under oath, in accordance with Rule 9 of the rules of this Court. The defendant represents to the Court that the motion is filed in good faith and that the Answer filed herein states a good and complete defense to the Complaint herein.

WILLIAM T. HANNAN
Attorney for Defendant

• • • • • • • • • •

7

Filed Jan 2 1947

Objections to Motion to Vacate Judgment

Now comes the plaintiff and objects to the granting of the motion to vacate the default judgment entered herein and for reasons therefor says:

1. The said judgment was regularly entered and is now a final judgment.
2. The proposed answer does not state a defense to the claim of the plaintiff.

WILLIAM B. O'CONNELL,
Attorney for Plaintiff.

• • • • • • • • • •

Filed Jan 16 1947

Answer to Complaint

FIRST DEFENSE

The Complaint fails to state an action upon which relief can be granted.

SECOND DEFENSE

Comes now the defendant in the above entitled cause and for answer to the complaint filed herein, states as follows:

1. The defendant admits that he is the duly appointed administrator, D.B.N., C.T.A., of the estate of John Francis Brady, deceased.

2. The defendant admits that the plaintiff probated a claim as stated and the same was rejected as stated; the defendant has no knowledge or information upon which to form a belief with reference to the remaining allegations of the paragraph having to do with additional monies expended by the plaintiff. The defendant denies that he is indebted to the plaintiff for any sum whatsoever.

THIRD DEFENSE

The defendant states that plaintiff's claim is barred by the statute of limitations.

FOURTH DEFENSE

The defendant states that the subject matter of plaintiff's claim is res adjudicata against the plaintiff.

COUNTERCLAIM

The defendant states that the plaintiff used, maintained, and received the benefits and proceeds from a certain rooming house business located in real estate determined to be the property of this estate, and having collected the proceeds therefrom, was under a duty and obligation to account for and remit the same to the defendant or his predecessor as administrator of the estate

of John Francis Brady. The defendant states that in the course of the operation of the said premises, plaintiff received large and valuable sums of money for which she has failed and refused to account to the defendant or his predecessor, and failed and refused to deliver and pay over to the defendant or his predecessor any or all of the sums so collected by her.

WHEREFORE, This defendant asks for an accounting by the plaintiff wherein by reason of the operation of the premises aforesaid, and claims judgment against the plaintiff for such amount or amounts that this Court, after such an accounting shall prescribe to be due and owing to the defendant as administrator of the estate of John Francis Brady.

JOSEPH A. CANTREL

*Administrator of D.B.N., C.T.A.
Estate of John Francis Brady*

WILLIAM T. HANNAN

Attorney for Defendant
637 Woodward Building

• • • • •

10

Filed Jan 15 1947

Order

Upon consideration of the motion of the defendant to vacate the default judgment entered herein, it is by the Court this 15th day of January, 1947,

Ordered, that the default judgment entered herein against the defendant on the 3rd day of December, 1946, be and the same is hereby vacated.

T. ALAN GOLDSBOROUGH

Justice

• • • • •

26

Filed Jul 30 1948

Memorandum of Expenditures of Plaintiff**REAL ESTATE TAXES ON PREMISES 2900 P St., N. W.**

1929 arrears, paid, 1933	\$ 154.68
1933, 1st half	85.85
2nd half	81.21
1935, 2nd half	70.97
1936	68.24
	68.24
1937	68.24
	68.24
1938	80.42
	79.62
1939	79.62
	79.62
1940	79.62
	79.62
1941	79.62
	79.62
1942	79.62
	79.62
1943	79.62
	79.62
1944	79.62
	79.62
1945	100.62
	100.62
1946	100.62
	100.62
	\$2183.63

27

WATER TAX.

1933	14.42
1934	9.24
1935	10.55

1936	13.34
1937	16.94
1938	26.53
1939	18.27
1940	18.76
1941	16.38
1942	20.79
1943	20.79
1944	20.79

T. \$ 206.80

28

LIENS;

Lien of the Perpetual Building Association
acquired September 7, 1934, evidenced by note
of J. Frank Brady in face amount of One
Thousand Dollars:

Balance due on note, Dec. 1, 1936 \$872.81

Paid by plaintiff and lien released on De-
cember 1, 1936,

Lien of plaintiff for purchase money paid by
her, title taken in name of husband, J. Frank
Brady, 1922 \$3,500.00

Lien of plaintiff for payment of First Trust
and interest. Jan 5, 1926 5,150.00

Advance by plaintiff to J. Frank Brady, de-
ceased, Sept. 28, 1927 1,156.00

Loan to J. Frank Brady, deceased June 23,
1924 225.00

December 16, 1924 90.00

August 6, 1926 25.00

September 7, 1926 25.00

June 25, 1924 319.16

Interest on First Trust, Nov. 29, 1920	150.00
Interest on First Trust, June 1, 1920	150.00
Balance on \$1000.00 note of deceased December 1, 1938	872.81

29 REPAIRS AND IMPROVEMENTS

3/27/1925	W. K. Reeve, interior repairs	\$ 282.54
10/29/25	Ray Fuel Oil Burner Co. Installing Burner and Tank	715.00
12/12/25	Ready-Kemp Co., roof repairs	27.85
12/30/26	Ray Engineering Co. furnace repair	17.60
6/1/27	Ray Engineering Co. furnace repair	106.38
10/11/27	Ready and Sons, welding boiler	27.50
11/12/27	General Electric Co. Repairs	2.45
9/15/28	General Electric Co. (Georgetown)	26.50
6/5/30	A. Ableman, repairs to exterior and interior	310.00
4/2/34	Mathy Co. furnace repairs	30.00
8/2/34	Mathy Co. furnace repairs	30.00
7/20/34	National Electric Supply Co. refrigerator	278.48
10/9/34	Geo. D. Schafer, roof repairs	21.20
10/26/34	A. B. C. Construction Co., repairs	100.00
11/8/34	A. B. C. Construction Co., repairs	53.00
11/8/34	A. Ableman, papering room	14.00
12/31/34	Kerr & Co., plumbing	4.00
1/31/35	W. R. Gollan & Son cementing basement	95.00
7/24/35	Wm. Forhan, carpenter	30.00
9/10/35	Quaker City Linoleum Co.	50.00
1/3/36	Frank Kerr & Co.	1.50
4/4/36	J. Ledbetter, plumbing	12.00
3/10/36	Washington Gas Co., repairs	1.00
7/2/26	Cementing entire cellar	175.00
8/8/36	Reinhart Shade Shop	7.50
9/10/36	Nat. Elect. Supply Co., repairs	3.50
12/2/36	Standard Oil Co., new furnace	795.08
12/30/36	Washington Renovating Co., painting	182.00

3/30/37	Adams Renovating Co. painting exterior	182.00
5/3/37	Washington Gas Light Co., stove	92.50

30

2/4/38	Adams Renovating Co.	\$26.50
3/19/39	A. A. Burke, house repairs	125.00
5/6/39	Wright's Floor repair	85.00
6/19/39	General Oil Burner Co., repairs	13.00
10/11/39	General Oil Burner Co., repairs	10.00
11/28/39	W. L. King, weatherstripping	65.85
11/29/39	Johns Manville Co., (insulating)	153.70
4/24/40	W. T. Galliher, lumber	5.85
4/27/40	A. A. Burke, painting and repairing floor	82.00
4/30/40	J. E. Gillis, carpenter wood work	28.41
9/4/40	McCleary & Wright, floor repair	15.00
10/2/41	Standard Oil Co., Burner service	10.00
1/26/42	Standard Oil Co., burner service	2.95
1/3/42	A. A. Burke, painting	10.00
11/17/43	Security Home Improvement Co.	75.00
2/21/44	Wm. H. Gilliam, plumbing	28.95
8/31/44	Geo. D. Schaffer, repairing roof	7.50
9/9/44	Fenton Swanson, repairing chimney	37.00

31

LEGAL SERVICES AND COURT COSTS

5/13/38	To W. B. O'Connell	\$ 50.00
9/8/38	"	10.00
7/11/39	"	25.00
1/4/40	"	10.00
2/1/41	"	75.00
4/21/41	"	150.00
5/20/41	"	100.00
3/19/41	"	250.00
12/26/41	"	58.30

 \$688.30

 728.30

	432.30
	1160.60
4/27/37 Cash	200.00
	888.30
9/11/41 Batavia Times, printing	232.30
MONEY ADVANCED ON ACCOUNT OF ADMINISTRATOR	
U. S. F. & G.	25.00
F. & D. of Md.	10.00
EXPENSES OF LAST ILLNESS AND FUNERAL	
Lot, doctors bill, etc.	636.40
32	TOTALS
Real Estate Taxes	\$ 2183.63
Water Tax	206.80
Liens, loans, etc.	12,535.78
Repairs and improvements	4455.29
Legal Service court costs, etc.	1792.00
	\$21,173.50

• • • • • • • • • •

33 Filed Jul 30 1948

Memorandum for Mr. Justice McGuire

This suit is a companion case to the case of Games v. Brady, et. al., (Civil Action No. 2508; No. 8010 in the United States Court of Appeals, 76 U. S. Appeals, D. C. 47,) hereinafter referred to as the Games case.

The present suit was filed after, and as a result of, the final decision in the Games case, such final decision being evidenced by the amended decree entered, on the Mandate of the Appeals Court, on Dec. 14, 1945; Civil Docket 6, Page 255.

The facts are these: John F. Brady and Anne Joyce were married in 1917 at Springfield, Massachusetts. Shortly thereafter, each opened individual savings accounts in a building association at Norwood, Massachusetts, into which each deposited \$25.00 per month.

Brady continued in Boston in the employment of a railroad for several years. In 1922 he received an appointment with the Interstate Commerce Commission as a traveling examiner. Because of this appointment the Bradys moved to Washington, D. C., where they bought a home at 2900 P Street, Northwest, from a Mrs. Pierce for \$8,500, the down payment being \$3,500, with a first trust in the sum of \$5,000. In order to make the down payment, Mrs. Brady sold the house in which they were living on Clarkwood Street, Matapan, belonging to her, from which sale she received \$3,500. This she used to make the down payment on the P Street

house. The title to the premises was taken in the
34 name of J. Frank Brady, the husband, who handled the purchase. In this property, of course, Anne Brady, so far as the legal title was concerned, had her dower interest.

The house was occupied by the Bradys as a home. In 1926, Mrs. Pierce, holder of the first trust, demanded payment of the \$5,000 due. Brady had converted his money in the Norwood Building Association into securities, and afterwards disposed of them. Mrs. Brady received none of the proceeds. When Mrs. Pierce requested payment of the trust, Mrs. Brady transferred her account in Norwood to the Potomac Savings Bank where she had an account and, on January 5, 1926, procured a certified check in the amount of \$5,150, which was used to pay off the trust, with interest, at the American Security & Trust Co., and the trust was released.

During all this time, and for years after, Brady spent most of his time traveling in connection with his employment. Mrs. Brady remained at home and received contributions from her husband regularly for the support and

maintenance of herself and son, which contributions eventually reached the sum of \$85.00 semi-monthly. This money was deposited in her individual bank account and was used for running the house and paying such expenses as heat, light, telephone, food, clothing, medical expenses, tuition for their son, etc. Mrs. Brady also rented rooms in the premises, and received a monthly income which averaged over \$120.00 per month during the period in question. The rooms were rented up to and including the present date. This income was also deposited in her individual bank account.

Out of this account Mrs. Brady paid real estate taxes on 2900 P Street from 1933 to the present date, the total paid by her from 1933 to the date in 1946 when she acquired, for the second time, full legal title to the property, amounting to \$2,183.63.

On September 7, 1934, at Brady's request, she consented to a loan on the property from the Perpetual Building Association to Brady, in the amount of \$1,000, and Brady simultaneously transferred to her the full legal title.

35 This loan was reduced by Brady by monthly payments of \$10.00, and at the time of his death the amount due the Perpetual was \$872.81. A month after Brady died, in order to release the deed of trust securing this loan and to clear her title to the property, the title being then in her as a feme sole, Mrs. Brady paid this amount to the Perpetual and the lien was released of record. (It is interesting to consider here how much stronger Anne Brady's position could have been if she had merely paid off the \$5,000 note and the \$1,000 note, and retained in her possession the notes and releases without recording such releases. She would then have been in the position of a secured creditor of the estate, since she was not a mere volunteer, but was in good faith protecting her interest in the real estate, which otherwise would have gone to foreclosure and sale. Having done this in good faith, has she lost her right to assert an equitable lien against the real

estate or the fund which stands in its place? We contend she has not.)

WATER BILLS

During the period from 1933 through 1944, Mrs. Brady paid the yearly water bills totaling \$206.80. That she is entitled to this may be seriously questioned, since water used was the basis of the charges made, and should fall into the same category as food, clothing, medicines, etc.

ADVANCE OF \$1,156

Counsel expected to be able to show at the trial that this item consisted of the payment by Mrs. Brady of a note of Brady's held by the Morris Industrial Bank of this city, which was in default, but the declining powers of memory of the aged plaintiff, which demonstrated themselves in other particulars, prevented positive proof. It was thought that this item would further establish the course of conduct between the husband and wife, i. e., that money Brady sent her for support of herself and their child was often used paying off his personal obligations.

36 OTHER LOANS AND ADVANCES BY MRS. BRADY

The cancelled checks, dated during 1924 to 1926, totaling \$684.16, were admitted as tending to show further that Anne Brady was the one who was the stable character in the family, and during all of his married life Brady fell back on her to put up money for him when he was in need of it. Witness also the payments of interest she made on the real estate note as shown by her checks, (Exhibits 11-11c). It is probable that if she had thought at any time from 1922 to his death she might be called on to prove the moneys she spent on Brady's account, the bills she paid for him, and his obligations that she met when he defaulted, she might have produced evidence to show that a great part of what he sent her for support was so expended. As it is, she is singularly fortunate that she has been able to

find so many receipts and cancelled checks to substantiate her claim.

As above related, the title to the P Street property was in Brady from 1922 to September 7, 1934 (with dower in Mrs. Brady). On the latter date Brady relinquished his legal title to his wife. On June 8, 1942 (the date when the United States Court of Appeals in *Brady, et al. v. Games*, 76 App. D. C. 47, modified and affirmed the decree of the District Court), the widow's legal title to the real estate was finally held to be subject to the Games' claim, but good against the rest of the world. Nothing in that opinion did, or could, reach back to 1922 and deprive her of her dower right then acquired, since she was found to be innocent of any fraud in any degree by the jury. Mrs. Brady, from the original purchase of the property in Brady's name, had a dower interest. From September 7, 1934 to June 8, 1942 she held full legal title, and held it from that time until she purchased the property from herself on September 11, 1944 for \$15,500.

As a result of this purchase a fund of \$15,500 was held by Joseph A. Cantrel, Esquire, Administrator c.t.a., d.b.n. of Brady's estate, subject to two claims only, first, the claim of Mrs. Brady for her dower right, for her
 37 expenditures in creating, preserving and enhancing the value of the property from which the fund was realized, and for her expenditures incident to Brady's last illness and burial, including the money advanced by her to pay court costs, etc. of administration; and, second, Mrs. Games claim.

There now arises this question: When did the rights of action here asserted arise in Mrs. Brady? That she had no knowledge of the alleged fraud, both Court and jury found. She naturally looked to the property, into which she had put her moneys, as wife with dower interest, as owner of the full legal title from 1934 to 1942, and as owner of the legal title, subject to the Games claim, from June 1942 until September 11, 1944. From September 7, 1934

until April 22, 1939 (when the case of *Games v. Brady*, et al was filed, establishing a *lis pendens*), Mrs. Brady could have sold the P Street property to any bona fide purchaser for value, and could have transferred a good fee simple title. Up to the date in 1942 when the Court of Appeals in the *Games* case affirmed the lower court, she had no claims to pursue against anyone—she was not a creditor,—she was the owner of the title to the real estate on which she had paid taxes, and had expended her own money for improvements and repairs. Her cause of action could not arise until her title to the property was attacked by Mrs. Games, and until the Court of Appeals, to a limited extent, had affirmed the decree of the lower court sustaining that attack, to-wit, June 8, 1942. (*Schleicher v. Schleicher*, 120 Conn. 528, 182 A. 162 (discussed below.))

On April 27, 1943, less than a year after that date, Mrs. Brady filed her claim for these expenditures in the Probate Court, Cl. Doc. #27, Fol. 222, against her husband's estate. The claim was rejected by Cantrel, the Administrator, on May 29, 1946.

38 Mrs. Brady filed this suit to enforce her equity against the fund on August 14, 1946, within three months after her claim had been rejected.

On these facts our position is this:

1. That Mrs. Brady's claim is equitable and not subject to the Statute of Limitations governing actions at law. Even if this were not so, she filed her claim and her suit well within the period of limitations.

2. That Mrs. Brady's rights are superior to those of Mrs. Games and must be paid before the \$15,500 special fund can be used to pay the Games' claim, because that fund was created, preserved and enhanced by Mrs. Brady.

3. That Mrs. Brady was entitled to possession of the real estate from the date of purchase, in 1922, until the present date, and no surcharge, as for rent, etc., can be made against her claim. Certainly as Brady's wife she was so entitled. As his widow, with legal title to the house, she

was still entitled to possession. Even after the decision in the Court of Appeals in 1942 she was entitled to possession against all the world until the sale of the real estate in 1946, for she still had legal title, and was entitled to possession until her dower was assigned. Neither Mrs. Games nor the Administrator could take away that possession (See *Reilly v. Cullinane*, 53 App. D. C. 17; *Bride v. Reeves*, 36 App. D. C. 476-484; and *Wilkes v. Wilkes*, 18 App. D. C. 90).

After the sale of the property under Court order, Mrs. Brady was still entitled to possession for she was the only one who would buy the property. Who else would buy it with her dower interest still unextinguished? Yet she paid a full and fair price for it, which price was approved by the Court. She got no deduction as for dower, nor any allowance out of the special fund arising out of the sale, in commutation of dower. Since the special fund is, in the eyes of the law, to be treated as a substitute for the real estate, Mrs. Brady's dower right attaches to the fund.

4. That under the opinion of the Court of Appeals the transfer was voidable only in favor of Mrs. Games, and no rights of Mrs. Brady here involved were disposed of in that decision. The legal title was never truly divested from Mrs. Brady. Only two people, Mrs. Brady and Mrs. Games, could look to the fund arising from the sale of the real estate for payment of any claim, and the surplus left over, if any, from satisfying their claims, goes to Mrs. Brady. The fund is, in law, a trust fund, created for the purpose of satisfying the Games claim, but subject to prior equities in Mrs. Brady. This leaves the fund, although in the hands of the Executor, immune to the claims of other creditors of Brady, for they are barred by the amendment injected by the Court of Appeals, viz., "To the extent that the judgment" (of the lower Court) "avoids the transfer as against other persons, it should be modified." The transfer, therefore, was good in Mrs. Brady against all the world except Mrs. Games; and the proceeds

of the sale of the property cannot be diverted in favor of other claims or claimants. Thus, the fund is not a part of the estate of Brady, but is a trust fund held by Joseph A. Cantrel, Esquire, as a trustee, and the fact that Cantrel also happens to be the Administrator of the Brady estate does not make the fund subject to any claim of that estate. Neither is the fund subject to charges of costs, commissions, attorney's fees, etc., since those are claims made in the probate case, and such claims are barred by the decision of the Court of Appeals.

40

Dower

The matter of Mrs. Brady's dower interest was adverted to in argument before the court for two reasons: first, as an additional reason in support of her claim for an equitable lien on the property, and demonstrating her right to possession without surcharge for rent until such time as her dower should be assigned; and, second, so that if this court should be persuaded that the decision in the Games case in the lower court and in the Court of Appeals had the effect of making the transfer to Mrs. Brady on September 7, 1934 *void ab initio* she would still be entitled to reimbursement for expenditures made by her to protect her dower right.

It is thought that the court will not need to go into the question of dower subsequent to the date of the transfer of the property to Mrs. Brady, because under the circumstances in this case that transfer was not void but merely voidable, and that not in its entirety, but only insofar as the interests of Mrs. Games were concerned.

Nevertheless, it may be argued that Mrs. Brady lost her right to claim dower by her failure to waive her rights under her husband's will. Under the District of Columbia code, however, if the will leaves nothing to the widow, she is not barred of her dower interest by her failure to waive. In this case, as of the date of Brady's death, he left Mrs. Brady nothing under his will; he died insolvent and at that time the title to the real estate here involved was in Mrs. Brady.

The pertinent section is found in Title 18, Section 214, as follows:

"If, in effect, nothing shall pass by such devise she shall not be thereby barred, whether she shall or shall not renounce as aforesaid, it being the intent hereof that a widow accepting or abiding by a devise in lieu of her legal right shall be considered a purchaser with a fair consideration."

Further, fortifying Mrs. Brady's contention that even if stripped of everything else, she had a dower interest
41 in the property which entitled her to possession and to reimbursement for her expenditures, are Sections 1305 of Title 16 of the D. C. Code, and 214 of Title 18 of the D. C. Code, *supra*. It is obvious that the District Court, in ordering the sale of 2900 P Street, Northwest, could have had no intention of attempting to wipe out her dower interest;—it could not without compliance with Ti. 16, Sec. 1305.

The first section provides that, "Whenever a decree is rendered for the sale of land, in the whole of which a widow is entitled to dower, if she will not consent to a sale of the same free of her dower, the court may, if it appears advantageous to the parties, cause her dower to be laid off and assigned * * *".

Section 214 of Title 18, *supra*, follows those provisions relating to renunciation by the widow of devises and bequests, and the effect of failure by the widow to renounce, within six months after administration is granted, as a bar on her dower rights, and was enacted with obvious intent to cover situations like the one which arose in this case.

The reason for referring to these sections is that the District Court did not assign dower as required by section 1305 above; and further because nothing passed by way of devise or bequest to Mrs. Brady under Brady's will, which made section 214 above applicable to her situation. See also *Hasler v. Williams*, 34 App. D. C. 319, and *Reilly v. Cullinane*, 53 App. D. C. 17.

She thus could not be charged with rent during the time of her occupancy of the property, even if the transfer to her

had been void, and not merely voidable. *Bride v. Reeves*, 36 App. D. C. 476-484.

42

Res Adjudicata

Before taking up in the necessary detail the various elements, in these two companion cases, which in our view make the decision in the Games case unavailing as a defense herein, the attention of the Court is called to the case of *Hines v. Welch*, 57 App. D. C. 371, and *Schleicher v. Schleicher*, 120 Conn. 528.

The first of these cases was decided January 3, 1928, and involved the following situation:

The direct question involved was whether a prior judgment between the same parties established *res adjudicata* in the later suit.

The committee of a veteran, who before that time had been adjudicated of unsound mind, sued the United States to recover \$3,392.50 claimed to be due the veteran under a certificate of war risk insurance.

The declaration alleged, among other necessary allegations, that the veteran was permanently and totally disabled; that he had been adjudged of unsound mind in the District of Columbia Courts, which mental condition had existed since December 1917; and because of hardships suffered in the military service had contracted tuberculosis, which at the time of the suit had become permanently organic, "which, together with the lunacy and adjudication of lunacy, creates a state of permanent disability."

The plea, in answer to this declaration, admitted, among other things, the adjudication of insanity, but averred that the veteran had been legally restored to reason; denied that he had contracted tuberculosis because of military service, and denied that the tuberculosis, with his lunacy, rendered him permanently and totally disabled.

Trial by jury was had, a general verdict was returned, finding the issues in favor of the plaintiff, and upon this verdict a judgment was entered for the amount of \$3,680, which presumably was paid.

43 Thereafter, in 1926, the same veteran filed a petition for a writ of mandamus against Hines, to require him to pay the veteran the amount due him as compensation, (as distinguished from insurance,) for permanent and total disability arising out of his military service. His claim was based upon the duty of the defendant Hines to cause him to be rated as permanently and totally disabled and to pay him \$100.00 per month; that this duty arose out of the statute which made determination discretionary upon the part of Hines, "unless the same has been first adjudicated by a competent court with jurisdiction so to do."

In the opinion the court states the grounds upon which its decision is later predicated:—"From these pleadings it is apparent that no issue is made upon the proposition that the award of compensation to a discharged soldier is, under that statute, discretionary with the Director of the United States Veterans' Bureau, unless there is no longer an opportunity for the exercise of discretion, because the right to such compensation has already been adjudicated."

The decision then discusses at great length the rule in mandamus that discretionary powers cannot be coerced by the writ, and proceeds: "The decision in this matter, therefore, rests upon a construction of the legal effect of such verdict and judgment."

"We shall therefore examine the claim of res adjudicata."

* * * * * * * *

After discussing the general principles lying under the doctrine of res adjudicata, and the Supreme Court cases in which such principles are enunciated, the Court further says:

"But it is equally as well settled that such bar of estoppel only extends to issues which were necessarily involved in a decision of the former case or controversy in question, and not to other collateral issues, or issues unnecessarily made and adjudicated." It was said in *Cromwell v. County of Sac*, 94 U. S. 351, 356:

44 “ ‘It is not believed that there are any cases going to the extent that, because in the prior action a different question from that actually determined might have arisen and been litigated, therefore such possible question is to be considered as excluded from consideration in a second action between the same parties on a different demand, although loose remarks looking in that direction may be found in some opinions. On principle, a point not in litigation in one action cannot be received as conclusively settled in any subsequent action upon a different cause, because it might have been determined in the first action.’ ”

“It was early announced in *Hopkins v. Lee*, 6 Wheat. 109:

“ ‘Under this rule, the decree in this case was proper evidence, if it decided, or professed to decide, the same question which was made on the trial at law, For to points which came only collaterally under consideration, or were only incidentally under cognizance, or could only be inferred by argument from the decree, it is admitted that the rule does not apply.’ ”

“It is believed that there are no sound authorities which differ with the rule thus announced. It has been followed in this jurisdiction. *Tribby v. O’Neal*, 39 App. D. C. 467; *Carmody v. Simpson-Sullivan Co.*, 44 App. D. C. 39; *In re Curtiss*, 46 App. D. C. 183.”

“ * * * attention will be given to the question whether the issues necessarily involved are identical.”

“In the suit upon the certificate of insurance,” (the first suit) * * * The law did not require that he allege or prove any particular cause of disability; it was not required to have been of service origin; it might have originated from his own misconduct. If he was permanently, totally disabled, he was entitled to recover. All the jury was required to find was that the insured was totally, permanently disabled, and the duration of such disability. It will be observed that the verdict of the jury,” (the general verdict) “and the judgment of the court in the insurance case went no further than to find such total disability.”

45 "But it is argued that, the declaration having averred that the plaintiff was afflicted with insanity and tuberculosis, and issue having been taken thereon by defendant, it must be concluded that there was an adjudication that the plaintiff was afflicted with insanity and tuberculosis. The verdict and judgment, being general, could not, even if these issues were properly raised in the case, be an adjudication as to either. *Russell v. Place*, 94 U. S. 606; *De Sollar v. Hanscome*, 158 U. S. 216. * * * The said judgment, therefore, only established the fact that from December 24, 1920, to March 24, 1926, the appellee was totally and permanently disabled."

The Court then held that there being no identity of issues in the second case, the verdict and judgment in the first case did not establish *res adjudicata* in the latter.

The analogy between the case above discussed and the Brady case now before the Court is at once apparent.

The Games case could not and did not dispose of, for example, Mrs. Brady's claim that her payment of taxes, repairs, and improvements created in her a lien against the real estate, and against the fund resulting from the sale of the real estate. These items were nowhere mentioned in the pleadings, nor in the proof, nor was the jury instructed with respect to them, nor did the Court in its decree dispose of them. Nor was the item of \$872.81 paid by her after Brady's death to the Perpetual Building Association to release the first trust put on the property by Brady, involved in that case in any way.

Even with respect to the \$3,500 down payment on the property, the trial court in the Games case limited the issues to avoid a determination of the issue here raised, namely, 'Did the money paid by Mrs. Brady as the down payment on the house belong to her; Was it her own property, and not the property of Mr. Brady?' And in like manner with respect to the \$5,150 which she paid, releasing the first trust and cancelling the first trust note. It was never decided nor could it be decided under the issues framed by

46 the court in that case whether those moneys were or were not the sole and separate property of Mrs. Brady.

On the contrary, the court carefully and rigidly excluded from its own consideration and from the consideration of the jury the fact of ownership of those funds. A reading of the record demonstrates this;—

1. In her answer to the Games suit, Mrs. Brady attempted to raise the question of her equitable ownership of the property “by reason of the fact that she, from her own personal estate, paid the entire purchase price for the said property.” (See ninth defense, page 17, of the Appendix to Appellant’s brief, *Brady et al. v. Games*, No. 8010, U. S. Court of Appeals.)

She attempted to claim in that case that by reason of her payment of the purchase price from her own separate estate, she was entitled to a decree, declaring the legal title to be in her. She did not claim at that time an equitable lien upon the property for the repayment of the amount of the purchase price. The court, however, refused to submit this issue to the jury and refused to instruct the jury with respect to this issue. In her request for instructions, prayer No. III, page 18, Appendix, she had asked that “If the jury believes that the money paid for the property known as 2900 P Street, Northwest, was, as testified to by Mrs. Brady, her own money and not the money of Mr. Brady, your verdict should be for the defendants.” This prayer was refused, despite the fact that the only evidence and the uncontroverted evidence in that case was that Mrs. Brady had received the money paid for the house partly from the sale of real estate owned by her in Massachusetts and partly from a savings fund in her sole and separate name in a Norwood, Massachusetts banking institution. The court, in refusing this prayer, ruled out as an issue the question of whether or not Mrs. Brady was the owner and the sole owner of these funds;

2. That this is so is demonstrated by the issues of fact which the court submitted to the jury on this point. The

jury's inquiry was not directed to the question "Did Mrs. Brady own the money which she paid?" Its inquiry
 47 was directed rather to the source from which she had acquired the money. No. 3 of the four questions was the following: "In the purchase of the 2900 P Street property did Mr. Brady use \$3,500 of money belonging to his wife and which had been acquired by her other than from him? And question No. 4 to the same effect, as follows: "In paying off the first trust on the said property, was the \$5,150 used for this purpose money which belonged to Mrs. Brady and which had been acquired by her other than from Mr. Brady?" To each of these questions the jury answered, "NO."

Since it is from this record that the court, in the present case, must determine what matters were in issue in the earlier case, it is submitted that the record shows that, at least in the opinion of the Chief Justice of this Court before whom the case was tried, the issue was NOT WHETHER THE MONEY BELONGED TO MRS. BRADY, BUT WHETHER SHE HAD ACQUIRED THAT MONEY FROM HER HUSBAND. Thus the question of the ownership of the funds was begged.

The court apparently did not consider that question to be in issue. That being so, the court in this case has a right to pass upon the issue and the plea of res adjudicata does not apply. The jury was not asked to, indeed not permitted to, pass from the question of the source of these funds, TO THE QUESTION OF THEIR OWNERSHIP. If this were not so the court in that case would have been compelled to recognize section 207 of Title 30 of the D. C. Code, as follows:

"All the property, real, personal and mixed, belonging to a woman at the time of her marriage, and all such property which she may acquire or receive after her marriage, FROM ANY PERSON WHOMSOEVER, by purchase, gift, grant, devise, bequest, descent, in the course of distribution, or by her own skill, labor or personal exertions,—SHALL BE HER OWN PROPERTY AS ABSOLUTELY AS IF SHE

WERE UNMARRIED and shall be protected from the debts of the husband shall not in any way be liable
48 for the payment thereof.—”

and would have been compelled to instruct the jury as to the effect of this provision upon the question of ownership. This it did not do. This present court, however, will, it is believed, find it necessary to determine the ownership by Mrs. Brady of the moneys in question, and will do so in the light of the section above referred to.

The same section is believed to be conclusive, not only upon the point above discussed, but also with respect to the moneys earned by Mrs. Brady by taking in and caring for roomers at 2900 P Street, Northwest.

Parenthetically, it should be noted that even if the funds had been acquired from Mr. Brady, the date of their acquisition must have been prior to 1922, (with respect to the \$3,500) and prior to 1926, (with respect to the \$5,150). This was long prior to the appearance of Mrs. Games upon the Brady domestic scene and long prior to her rights under the contract dated December 21, 1933. Hence, it cannot be said, in any possible view of the case, that the gift of such moneys from Brady to his wife was in fraud of any claim of Mrs. Games.

The case of *Schleicher v. Schleicher*, 120 Conn. 528, 182 A. 162, was referred to early in this memorandum. It is believed that at this point some of the details of that case should be called to the attention of the Court. It will be noted that the respective situations of the husband and wife in the present case were reversed in the *Schleicher* case. The facts in the latter case were as follows: The plaintiff, husband of the defendant, moved from Connecticut to New York and purchased a tract of land in Madison, causing the deed to be made to the defendant wife. Thereafter, he constructed a dwelling house and garage upon the land, placing a mortgage of \$2,000 and using the proceeds, together with money contributed by himself and his wife, to buy materials. When the house was completed the husband requested the wife to live with him there, but she refused. He

49 later requested her to deed the premises to him, but she refused unless he would pay her \$2,000. He then filed for a declaratory judgment that he was the sole owner of the premises. In that case judgment was entered for the wife. The husband had occupied the premises during the time preceding the above judgment against him, claiming and believing that he was the real owner of the premises.

After the judgment he vacated the premises, and brought this action to recover the sums expended for him for taxes, interest on the mortgage, and materials used for the maintenance and repair of the premises. The wife filed a counterclaim seeking to recover the rental value of the premises during the time of his occupancy. The trial court gave judgment for the plaintiff husband to recover the sums paid by him for taxes, materials, interest, and insurance premiums; and also for the defendant wife upon the counterclaim. The defendant appealed.

After detailing the reasons and authorities given by the Court as a basis for its ruling, the Court held:

“That one, who believing himself to be the owner of realty, has in good faith made improvements or expenditures thereon, is entitled on equitable principles to reimbursement of the amount to which the value of the property has been enhanced thereby.”

“That mortgage interest and taxes paid in the belief that one is the owner of property are recoverable, though not made under compulsion to save the property.”

“A judgment for defendant in an action to determine title to realty does not preclude the plaintiff from subsequently bringing an action against the defendant therein to recover sums expended by him for carrying charges and repairs while occupying the premises under a bona fide claim of ownership.”

In arriving at these conclusions, the Court said in its opinion:

“The judgment in the former action does not preclude the plaintiff from a recovery in this action of the sums al-

lowed by the trial court. His present claim is the
 50 outgrowth of the judgment which denied his title to
 the land. Until the fact that the defendant was the
 true owner had been determined, the present action would
 not lie. While it might have been possible to broaden the
 scope of the former action to include a determination of the
 right of the plaintiff to recover for the expenditures made
 by him, this matter was not involved in the question of title
 to the land actually litigated, and was not within the scope
 of the complaint in that action. The present ground of
 claimed recovery is distinct and severable from the claim
 made and litigated there. The plaintiff is entitled to main-
 tain an independent suit to recover for those expenditures
 after the determination of the title to the land in the former
 judgment." *Maloney v. Rust*, 42 Conn. 236, 242; *Kane v.*
Morehouse, 46 Conn. 300, 304; *Lovell v. Hammond Co.*, 66
 Conn. 500, 512, 34 A. 511; *House Cold Tire Setter Co. v.*
Ingraham, 83 Conn. 31, 33, 75 A. 80; *Viall v. Lionel Mfg.*
Co., 90 Conn. 694, 698, 98 A. 329; *Brady v. Anderson*, 110
 Conn. 432, 436, 148 A. 365; *Loughridge v. Morris*, 68 Okla.
 80, 171 P. 451; 34 C. J. pp. 823, 836.

The Maryland cases which are authoritative in this juris-
 diction are to the same effect.

In *Quynn Adm. d.b.n. vs. Stainer, et ux.*, 3 Harris &
 McHenry (Md. Appeals), p. 128, it was held "that the bona
 fide possessor of real estate without notice, is entitled to
 enforce compensation for improvements after eviction
 from, or surrender of, premises." Citing *Union Hall v.*
Morrison, 39 Md. 292; *McLaughlin v. Barnum*, 31 Md. 425,
 453; *Tongue v. Nutwell*, 17 Md. 212; *Barnum v. Barnum*,
 42 Md. 314; *Strikes' Case*, 1 Bl. 75; *Ford v. Philpot*, 5
 Harris & Johnson (Md.) 312.

Under the authority of these cases, *res adjudicata* cannot
 be invoked as a bar to the claims made by Mrs. Brady in
 this suit.

51 The general propositions of law relied on by the
 plaintiff, in addition to the citations given above, to-
 gether with the authorities, follow:

McClintock on Equity, page 210:

“Whenever equity requires one who recovers land from an occupant who had made improvements on it while he was in possession under a good faith belief that he was the owner, to repay to the occupant the increased value added to the land by such improvements, it may secure the making of such payment by giving the occupant a lien on the land for the amount awarded to him.” Citing:

“The right to recover for such improvements originated in equity, but it was adopted by the common law courts and is now generally regulated by statutes. See discussion of the origin and development of this lien in *Darnall v. Jones, Executors*, 72 S. W. 1108, 24 Ky. Law Rep. 2090, refusing to allow the owner of land to recover the value of a building erected on the land in good faith and removed when his want of title was discovered.

Neeson v. Clarkson, 4 Harre 97, 67 End. Rep. 576;
Bright v. Boyd, (C. C. Me. 1841) 1 Story, 478;
Fed. Cas. 1875, Same Story, 605, *Fed. Case* 1876.”
 And again the same author says:

“The doctrine of subrogation was originally adopted by equity and its operation is governed by equitable principles. It may be decreed by equity, even though there is no agreement or intention of the parties to sustain it, but it may also be created by agreement of the parties. The doctrine was brought from the civil law originally for the benefit of a surety who was compelled to pay the obligation of his principal. It gave to the surety, in such case, the benefit of all liens or other remedies which the creditor had against the principal. It has now been extended to protect any one who, otherwise than a volunteer, pays a debt which ought, in equity, to be paid by another.”

Citing: *Memphis & L.R.R. v. Dow*, 120 U. S. 287
Hawker v. Moore, 40 W. Va. 49; 20 S. E. 848
Riggin v. Hilliard, 56 Ark. 476, 20 S. E. 402

Wilkins v. Gibson, 113 Ga. 31, 38 S. E. 374, 84
Am. State Rep. 204

Note: 35 Yale Law Journal, 484 and numerous
other cases

52 Dougherty, et al., v. White, Nebraska Supreme
Court, Nov. 20, 1924; 36 A. L. R. 425, page 421:

“Defendant went into possession under a deed claiming as owner, and is in the position of an occupying claimant. During the period of his possession he has improved the premises by the erection of a house, barn, wind-mill and well, and has paid and discharged certain liens, namely, a mortgage and a judgment for alimony, the latter being a lien upon the land, notwithstanding that it was a homestead. * * * Under these circumstances the defendant is entitled to be reimbursed for the taxes and liens discharged in the full amount thereof, together with interest at 7 per cent upon each item from the date it was paid. Defendant is also entitled to be reimbursed for the improvements placed upon the premises to the amount that such improvements enhance the value of the real estate at the time the decree shall be entered.”

And as to the right to recover for taxes paid, the case of the Wyoming Building and Loan Association v. Mills Construction Company, 60 A. L. R. 418, with annotation, is closely in point. That case holds that the payment of taxes by one who, or whose property, may be ultimately liable therefor should be encouraged rather than the contrary, and the requirements as to the necessity for protection should not be strict, but liberal, in order to entitle a lienholder who pays such taxes to subrogation. Since such payment discharges the property from the lien of the state for taxes, **THE RIGHT OF THE PAYER OF THE TAXES TO SUBROGATION TO THE LIEN IS TRANSFERRED TO THE PROCEEDS OF A SUBSEQUENT SALE OF THE PROPERTY.**

The right to follow the proceeds of the sale of real estate to impress a lien or trust upon it is clearly recognized in law. Whenever property in its original state and form is

impressed with the character of a trust, no subsequent change of such state or form can divest it of its trust character, so long as it is capable of clear identification. In the case of equitable liens on real estate, the conversion
 53 of the real estate into money does not wipe out the lien. In equity the device of an implied trust is used to carry out the maximum that equity regards that as done which ought to be done. See 26 R. C. L. page 1348, "Following Trust Property."

CONCLUSION.

The legal propositions urged above are amply supported by the authorities. But, even if there were no authorities, they are so sound in reason and in results that they need only to be stated to be accepted. It would be a strange and barbarous system of jurisprudence which, because of the entanglement of a husband in an unsavory alliance, would deprive his widow, against whom no fault can be urged in law, equity, or morals, of her own personal estate, invested in her home,—to purchase it, to repair and improve it, and to pay taxes on it, all in good faith, believing it to be hers,—for the benefit of a creditor of her deceased husband whose status is at best that of the third angle in a domestic triangle.

WM. A. GALLAGHER
 WM. B. O'CONNELL
For plaintiff

* * * * *

54

Filed Apr 12 1948

Memorandum Opinion

FACTS

John F. Brady (sometimes known as J. Frank Brady) and Anna Joyce (plaintiff herein) were husband and wife, being married in Massachusetts in 1917. About 1922 they moved to the District of Columbia and purchased a home

at 2900 P Street, N. W., title being taken in the name of the husband only. They occupied such as their home until 1934, though they had ceased to live together as husband and wife in 1931.

On December 21, 1930 Brady executed a will wherein he devised and bequeathed all his real and personal property to his wife. From 1931 to date she has rented rooms in the property to augment her income.

On September 7, 1934 Brady deeded the realty in question to Mrs. Brady.

Later, under date of December 21, 1933 Brady entered into an agreement with Mildred Games whereby he agreed to pay her a lump sum and Fifty Dollars a month for the support of her child during its minority. Monthly payments were made thereon until October 15, 1936, and Brady died November 6, 1936.

Later in 1939 Mildred Games sued John Francis Brady, Administrator c.t.a. of the estate of J. Frank Brady, on the above-mentioned contract (C.A. 2508) for Fifteen Hundred Dollars, the amount of arrearages then due, and prayed that the conveyance of the realty from J. Frank

Brady to his wife, Anna Brady, declared void on
55 the ground of fraud. On a trial of that case a jury found that the transfer had been made with intent to defraud Mrs. Games but that Mrs. Brady had no notice of that intent; that none of Mrs. Brady's money not acquired from her husband had gone into the purchase of the house. Thereafter the Court entered judgment for Mrs. Games and on appeal the lower court judgment was modified to the extent that the transfer was void only as against Mrs. Games and no one else, and with this modification, affirmed. (Brady v. Games, 128 Fed. 2d 754).

The case then went to the Auditor of this Court who, February 2, 1944, inter alia, found that it would be necessary to sell the realty in order to pay debts of the decedent. The property was sold to Mrs. Brady for \$15,500 and this sale was ratified by the Court September 11, 1944.

On April 27, 1943, Mrs. Brady filed a claim with the Probate Court in the amount of \$19,877.10 of which the Administrator d.b.n. c.t.a. allowed her \$1059.21 and on May 29, 1946 rejected her claim for the balance of \$18,817.89. Mrs. Brady then on August 14, 1946 brought this action (C.A. 36276) against the Administrator d.b.n. c.t.a. in the amount of \$19,676.41, representing the \$18,817.89 previously rejected, plus \$858.82 which she claimed to have subsequently expended for taxes, repairs, etc. By the time of trial this amount had allegedly further increased to \$21,173.50.

Games was granted permission to intervene in this cause and in her Answer to the Complaint, set forth that on January 13, 1947 she had filed her Amended Claim in the Probate Court showing a balance due her of \$9,069.87. Both the Administrator and Intervenor prayed for an accounting of the rents and profits from the property while in possession of Mrs. Brady.

CONCLUSIONS OF LAW

Both the validity of the agreement between J. Frank Brady and Mildred Games, and the question as to whether Mrs. Brady contributed of her own funds to the original purchase of the property are res judicata.¹

56 Not having been guilty of any misconduct however, Mrs. Brady had an inchoate right of dower in the property from the date of its purchase by her husband, which ripened into a right of action on the latter's death. Even though arguendo it may be said this dower merged in the full title given her by the deed of conveyance, it is only equitable it seems to me to hold that it was subject to being reinstated when the conveyance was held to be void as to Mrs. Games. Mrs. Brady is, therefore, entitled to an allowance of from 1/6 to 1/20 depending on her age, health and condition, of the sale price of \$15,500. (D. C. Code, 16-1305; Mersch on Probate Court Practice, p. 398).

Considering individually Mrs. Brady's claims:

¹ Woods v. Cannaday, 81 U. S. App. D. C. 281. Doctrine applicable to every point properly belonging to controversy and which parties might have brought forward.

1.) Taxes from 1929 to and including 1946 (note also this covers a period of two years after confirmation of the sale to her) in amount of \$2,183.63 should be disallowed for reasons hereinafter stated.

2.) Water rent in amount of \$206.80. Her counsel admit this is not properly included in her claim.

3.) Repairs and improvements in amount of \$4455.29. A careful examination of each item in this claim indicates that there were no improvements, in the true sense, made, but rather these items cover repairs and operating expenses of the property. Like the taxes, this item should be disallowed for reasons hereinafter stated.

4.) Purchase money and mortgage in amount of \$8650 should be disallowed under doctrine of res judicata.

5.) Loans to J. Frank Brady in amount of \$1840.16. The Administrator has raised the defense of the statute of limitations. While the Administrator is not bound to raise this defense, having raised it and the matter coming before the Court, the Court will carefully scrutinize the claims in the light of this defense. Since more than 20 years have elapsed since these alleged loans or advances were made, the Court holds them barred by the Statute.

6.) Interest in amount of \$300.00. This item was alleged to have been paid in 1920,—or two years before the Bradys came to Washington, hence is likewise barred by the Statute of Limitations.

7.) Lien of Building Association in amount of 57 \$872.81. This was a debt of decedent (so found by the Auditor) which was paid by his widow and her claim for this amount should be allowed. It should be pointed out here that this item is duplicated on the itemized claim exhibit.

8.) Funeral and last illness expenses in amount of \$636.40. This item should be disallowed since claimant has already been given an award by the Court to cover these items.

9.) Money advanced to Administrator, in amount \$35. This undoubtedly was an advance to her son, John Francis

Brady, who was subsequently removed as Administrator of his father's estate. This item should be disallowed.

10.) Legal services and court costs in amount of \$1160.60. Counsel make no attempt to justify this item as properly includable in the claim of Mrs. Brady. It should be here pointed out that as to the appeal in C.A. 2508 the costs were assessed against the Bradys. This item should, therefore, be disallowed.

Defendants have asked for an accounting of the rents received by Mrs. Brady while she occupied the premises. To accede to this request would necessitate reference to the Auditor and in view of all the items entering into the accounting for a rooming house business, the expense of such a reference, in the light of the size of the fund here involved, is not justified.

As the wife of the deceased, Mrs. Brady was entitled to live in and make use of the premises until 1934 when the property was deeded to her. She took no realty under the will, hence there was no occasion for her to exercise her right of renunciation. She occupied the premises as the apparent legal owner from 1934 to 1944, with the exception that from 1942 to 1944 her title was not good as against Mrs. Games. This is a wholly different situation from one in which the widow occupies the premises under her right of quarantine pending assignment of her dower by the Court.

It cannot, it seems to me, be successfully contended that Mrs. Brady's use and occupancy of the premises did not exceed in value any expenditures she made for taxes, repairs, water rent, or so-called improvements. But even if she had made considerable improvements to and which enhanced the value of the property, under her color
58 of title, in the light of decisions in this jurisdiction,²

There is considerable doubt as to whether or not she could recover therefor. Even T. 16, § 519 of the Code contemplates that taxes and necessary expenses for use and

² *Anderson v. Reid*, 14 App. D. C. 54; *Armstrong v. Ashley*, 22 App. D. C. 368, affirmed 204 U. S. 272.

occupancy are not necessarily recoverable in cases where title to property is involved.

Counsel for plaintiff urge that: "It would be a strange and barbarous system of jurisprudence which, because of the entanglement of a husband in an unsavory alliance, would deprive his widow, against whom no fault can be urged in law, equity, or morals, or her own personal estate, invested in her home, to purchase it, to repair and improve it, and to pay taxes on it, all in good faith, believing it to be hers, for the benefit of a creditor of her deceased husband whose status is at best that of the third angle in a domestic triangle."

That may be so, but the Court is here dealing with two innocent victims—Mrs. Brady and the child of Mrs. Games, and putatively at least that of Brady.

As to Mrs. Games' claim, the agreement made has been adjudged valid, and she is entitled as a consequence to a judgment for the payments in arrears (but not in future), plus interest and costs, less amounts already received by her.

MATTHEW F. McGUIRE
Associate Justice

April 12, 1948

* * * * *

59

Filed May 19 1948

Order for Judgment

This cause having come on to be heard at this term of court, and testimony having been taken and exhibits received, this court made certain findings of fact and conclusions of law which are incorporated in the memorandum opinion filed by this court in this cause on April 12, 1948. Upon consideration of the findings of fact and conclusions of law set out in the said memorandum opinion and upon consideration of the fact that the plaintiff, Anne J. Brady, was at the time of the death of John F. Brady, between sixty-one (61) and sixty-four (64) years of age, it is, by the court, this 19th day of May, 1948,

ORDERED: 1. That judgment be entered herein for the plaintiff, Anne J. Brady, in the sum of two thousand one hundred sixty-four dollars and forty-seven cents (\$2,164.47), consisting of eight hundred seventy-two dollars and eighty-one cents (\$872.81) with interest for monies advanced by the plaintiff in behalf of the deceased to the Perpetual Building Association; one thousand two hundred ninety-one dollars and sixty-six cents (\$1,291.66), representing the value of the dower interest of the plaintiff in the real estate adjudged to be the property of John F. Brady as of the time of his death on November 6, 1936.

2. That Mildred Games, Intervenor, be, and she is hereby, awarded a judgment in the principal sum of four thousand two hundred dollars (\$4,200.), said sum being the total of monthly payments of fifty dollars (\$50.) each from June 15, 1941 to May 15, 1948, both inclusive, and judgment is awarded for interest on each fifty dollars (\$50.) monthly payment aforesaid at the rate of six percent (6%) per annum from their respective due dates until paid, plus costs of this action, which represents payments in arrears since June 15, 1941, with interest, on her claim and contract. And it is Ordered, that this judgment shall in no wise affect a previous Order entered, to-wit, June 9, 1941, in Civil Action 2508 in which Mildred Games is plaintiff and John Francis Brady, Administrator, etc., is defendant, which awarded judgment to Mildred Games for fifty dollars (\$50.) monthly payments in arrears from November 15, 1936, to June 15, 1941, with interest, and which said judgment has been partially paid.

MATTHEW F. McGUIRE
Justice

* * * * *

61

Filed Jun 17 1948

Notice of Appeal

Notice is hereby given this 17th day of June, 1948, that Anne J. Brady, plaintiff herein hereby appeals to the

United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 19th day of May, 1948 in favor of Joseph A. Cantrell and Mildred Games against said Anne J. Brady.

WILLIAM B. O'CONNELL

*Attorney for Anne J. Brady
Plaintiff.*

No. 9988

BRIEF OF APPELLEE CANTREL

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

ANNE J. BRADY,

Appellant,

VS.

JOSEPH A. CANTREL, MILDRED GAMES,

Appellees.

**Appeal from the United States District Court for the
District of Columbia**

United States Court of Appeals

For the

District of Columbia Circuit

FILED OCT 1 - 1944

Joseph W. Stewart

CLERK

WILLIAM T. HANNAN,
Woodward Building,
Washington, D. C.

Attorney for Appellee Cantrel

TABLE OF CONTENTS

	PAGE
Counter-Statement of the Case	1
Summary of Argument	4
Argument:	
1. Under the Federal Rules of Civil Procedure it was wholly discretionary with the lower court to set aside the final judgment	4
2. Under the doctrine of res judicata the claims for monies allegedly expended by the appellant in the purchase of the house were barred as also the other claims advanced	5
3. The court properly disallowed the several claims of the appellant because of the Statute of Limitations	5
4. The claim for reimbursement of moneys expended for taxes, water rent, repairs, etc., was correctly disallowed because the Court found that these amounts were offset by the amounts claimed due under the counterclaim made by the appellee	5
5. The claim of the appellant is for an equitable lien upon funds which this Court has previously directed to be held only for the claims of the intervenor, Mildred Games	5
Conclusion	9

INDEX OF AUTHORITIES

Anderson v. Reid, 14 App. D. C. 54	8
Armstrong v. Ashley, 22 App. D. C. 368, affirmed 204 U. S. 272	8
Ferraro v. Rosenberg Co., C. C. A. Conn., 156 F. 2d 212	6

	PAGE
Games v. Brady, 76 U. S. Appeals D. C. 47	2, 3, 4, 6, 7, 9
Orange Theatre Corp. v. Royherstz Amusement Co., 130 F. 2d 185	6
Woods v. Cannaday, et al., 81 U. S. App. D. C., 281, 282	7
District of Columbia Code, Title 18, Secs. 210, 211, 212, 213, and 214	2
Federal Rules of Civil Procedure, Rule 55(c)	5

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 9988

ANNE J. BRADY,
Appellant,

vs.

JOSEPH A. CANTREL, MILDRED GAMES,
Appellees.

Appeal from the United States District Court for the
District of Columbia

BRIEF OF APPELLEE CANTREL

COUNTER-STATEMENT OF THE CASE

The appellant, widow of J. Frank Brady, deceased, brought an action against the administrator of her husband's estate to recover various sum of money claimed to have been loaned the decedent during his life and money claimed to have been expended by the appellant upon real property belonging to the decedent, such as taxes, mortgage payments and maintenance costs; also for money plaintiff claims she expended in connection with the administration of her husband's estate. The total amount of her claim was \$21,173.50.

In 1933 J. Frank Brady made a written contract with Mildred Games, intervenor below, by which he agreed to pay \$50.00 per month for the support of her child during her minority. In 1934 Brady transferred his real estate to his wife, appellant herein. In 1936 Brady died and payment under the agreement ceased. Brady left a last will and testament in which his wife was named sole beneficiary. No administration proceedings were had until June, 1938, when John F. Brady, son of decedent, qualified as Administrator c. t. a. The widow never filed a renunciation under the will nor an election as required by the District of Columbia Code, Title 18, Secs. 210, 211, 212, 213, and 214.

After John F. Brady qualified as administrator of decedent's estate in 1938, Mrs. Games filed a claim against the estate which was rejected and she then filed a suit against the administrator and the widow for a money judgment and to set aside the transfer of the real estate as fraudulent. The Court held that the agreement with Mrs. Games was a valid subsisting contract, gave a money judgment for the amount then accrued under the agreement and set aside the transfer of the house. This Court affirmed the judgment and held the transfer to be void only as against Mrs. Games (76 U. S. Appeals D. C. 47). Thereafter in July, 1938, the Court appointed the appellee administrator of the estate, d.b.n., c.t.a. The personal assets of the estate being insufficient to pay the debts, a sale of the real estate was ordered. The appellant herein filed an offer to purchase and the property was sold to her for the sum of \$15,500.00 some time in 1945. In the meantime the widow filed her claim against the estate, which is the basis of the suit below, in April, 1943. Certain items in the claim filed by the appellant were allowed by the appellee, and the others rejected in May, 1946. Suit was filed by the appellant on August 14, 1946.

Mrs. Brady testified in the present trial that she had never been employed and there is no evidence that she had

any outside income other than that supplied by her husband and income from the rental of rooms in the house belonging to Mr. Brady. In the trial of the *Games v. Brady* case (decided by this Court, *supra*) Mrs. Brady had attempted to show that her funds had been used in the purchase of the house and part of her present income includes the same money. This Court, in that opinion, confirmed the finding of the jury in that case that no funds of Mrs. Brady had been used to buy the house.

The appellee is in the position of a stakeholder in this case. The gross estate amounts to approximately \$11,500.00. The total claim against this fund on behalf of Mrs. Games is now in excess of \$6,000.00 and will, if the child attains her majority, total approximately \$10,000.00. The total claim of the appellant is over \$21,000.00. After deduction of administration costs it is anticipated that the fund available for the payment of claims will not exceed \$9,500.00. After the filing of a suit by the appellant, the appellee and his counsel attempted to adjust the claims of the appellant and Mrs. Games. Shortly thereafter the appellant had entered a default judgment against the appellee for reason that no answer had been filed. Thereafter, a motion being filed on behalf of the appellee to set aside the judgment, and the Court having considered the affidavit filed in support thereof, the default judgment was set aside and the case tried.

The lower Court found that the question of the validity of the agreement between J. Frank Brady and Mildred Games and the question as to whether Mrs. Brady contributed of her own funds to the original purchase of the property are *res judicata*. It was further found that the claim for real estate taxes upon the home from 1929 to and including 1946, in the amount of \$2,183.63, should be disallowed for the reason that Mrs. Brady occupied the premises and received the income from it as a rooming house. Because of the statute of limitations and the further fact

that the amounts expended were exceeded by the profits she realized from the use and occupancy from the premises, the claim for repairs and improvements in the amount of \$4,455.29 was denied upon a finding that the sums expended were not for improvements in the true sense but covered repairs and operating expenses of the property which was maintained for her own use and purpose. The claim made for loans to J. Frank Brady in the amount of \$1,840.16 were barred by the statute of limitations since they were made more than twenty (20) years before the suit. The claim for interest in the amount of \$300.00 claimed to have been paid in 1920, was likewise barred by the statute of limitations. The testimony showed that the appellant paid off a note in the sum of \$872.81, secured by a mortgage on the property, which note was made by the decedent which had been paid in order to preserve the property and therefore was allowed. The claim for funeral expenses, \$636.40 was disallowed because the evidence showed that the item had already been paid by the appellee when the claim was originally filed. The claim for legal services and Court costs in the amount of \$1,160.60 was shown to have been expended in the course of the appeal to this court in the *Games v. Brady* case, supra, and inasmuch as the costs were assessed against the Bradys the claim was disallowed.

The lower court concluded that the appellant had an inchoate right of dower in the property since the date of purchase by her husband, which ripened into a right of action on his death. The Court entered a money judgment, based upon the age of the appellant, for this dower right in the amount of \$1,291.66.

SUMMARY OF ARGUMENT

1. Under the Federal Rules of Civil Procedure it was wholly discretionary with the lower court to set aside the default judgment.

2. Under the *doctrine of res judicata* the claims for monies allegedly expended by the appellant in the purchase of the house were barred, as also the other claims advanced.

3. The Court properly disallowed the several claims of the appellant because of the Statute of Limitations.

4. The claim for reimbursement of moneys expended for taxes, water rent, repairs, etc., was correctly disallowed because the Court found that these amounts were offset by the amounts claimed due under the counterclaim made by the appellee.

5. The claim of the appellant is for an equitable lien upon funds which this Court has previously directed to be held only for the claims of the intervenor, Mildred Games.

ARGUMENT

1. Under Rule 55(c) of the Federal Rules of Civil Procedure it was wholly discretionary with the lower court to set aside the default judgment. This rule provides that "for a good cause shown the Court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." The Courts are unanimous in their holdings that the rule quoted is to be used at the sound discretion of the Court. An examination of the record will disclose that the appellant had the clerk make an entry of default on December 3, 1946 (App. 3). Thereafter a motion for final judgment having been filed on December 17, 1946, counsel for appellant moved in seasonable time on December 21, 1946, to vacate the default judgment. (App. 4). At the time of the hearing of the motion to vacate the default judgment, the Court had before him the proposed answer to the complaint which fully demonstrated that there were competent defenses to the action. Moreover, the Court having before it the pleadings in the case, was able to discern that the claim made by appellant, if allowed to stand, would almost ob-

literate the funds which were held by the appellee as stakeholder for the satisfaction of the judgment and claim of Mrs. Games for the support of the minor child of the decedent. It is apparent, therefore, that the court wisely exercised its discretion in vacating the final judgment.

Ferraro v. Rosenberg Co., C. C. A. Conn., 156 F. 2d 212.

Orange Theatre Corp. v. Royherstz Amusement Co., 130 F. 2d 185.

2. Under the doctrine of res judicata, the claims for moneys allegedly expended by the appellant in the purchase of the house were barred, as were also the other claims advanced in the complaint.

The greater portion of appellant's claim consists of the alleged lien of the plaintiff for purchase money for the home paid by her in the sum of \$3500.00 and the alleged lien of the plaintiff for payment of the first trust thereon and interest in the sum of \$5150.00 (App. 8). These claims were asserted by the plaintiff in her defense of the former action brought by Mildred Games, which cause was the subject of this Court's decision in the case of *Games v. Brady*, 76 U. S. Appeals D. C. 47. The record in that case fully discloses that the jury found as a matter of fact in the lower Court, that the appellant had not contributed her monies in the purchase and payment for the premises. This Court affirmed that case and the appellant is precluded by reason of the salutary doctrine of res judicata from raising that point anew.

Moreover, by the same doctrine, all of the claims asserted by the appellant in her complaint herein are barred by the doctrine of res judicata. An examination of the memorandum of expenditures filed by the plaintiff (App. 7-11) discloses that all of the monies claimed in the present action (with the exception of those commencing in 1944 when the appellant acquired the premises upon a Court sale) had been expended by the appellant at the time of the former suit. That being so, it is presumed that the claims

now made by the appellant were made in that former suit and were decided adversely to the appellant. The point has been fully decided in the case of *Woods v. Cannaday, et al.*, 81 U. S. App. D. C., 281, 282, wherein the Court said:

“We have held often enough not to require repetition that *res judicata* applies not only to points on which the Court was actually required to pronounce judgment, but, as well, to every point which properly belonged to the subject of the controversy and which the parties, in the exercise of reasonable diligence, might have brought forward at the time.”

3. The Court properly disallowed the several claims of the appellant because of the statute of limitations. The present suit was instituted in August, 1946. An examination of the memorandum of expenditures of the plaintiff, which constituted a Bill of Particulars in the action, discloses (App. 7) that the claim for taxes allegedly expended by the appellant up to the first half of 1943 was barred, leaving only the second half of 1943 taxes and the first half of 1944 taxes (a total of \$159.24) exempt from the operation of the statute, it being kept in mind that the appellant occupied these premises at all times and actually had a contract for their purchase in the later part of 1944. Similarly, the claim for monies advanced to and on behalf of the decedent (App. 8-9) are wholly barred by operation of the statute of limitations, it being noted that the date of the last advance in that group was made on December 1, 1938.

Likewise, the claim for repairs and improvements allegedly made (App. 9-10) discloses that the majority of the expenditures were made previous to August, 1943, and were therefore barred. Only the last four items of that group (totaling \$148.45) may be said to escape the defense of the statute of limitations. Again, although the claim for legal services and Court costs was disposed of by this Court in *Games v. Brady* wherein costs were found against the appellant, it is obvious, from the dates of the alleged

payments furnished in the memorandum of expenditures, that the claim is outlawed.

The claim for the expenses of the last illness and funeral, \$636.40, is not a part of this appeal inasmuch as it has been conceded that this amount was allowed and paid to the appellant by the appellee some time before the institution of these proceedings.

4. The claim for reimbursement of monies expended for taxes, water rent, repairs, etc., was correctly disallowed because the Court found that these amounts were offset by the amounts claimed due to the estate under the counter-claim made by the appellee. It is to be remembered that the appellee filed a counter-claim for the rents and the profits of the premises which had been enjoyed by the appellant from the date of death of the deceased in 1936 to the time of the purchase of the premises by the appellant. The Court found as a fact that "Mrs. Brady's use and occupancy of the premises did not exceed in value any expenditures she made for taxes, repairs, water rent or so-called improvements." The lower court went on to point out that "but even if she had made considerable improvements to and did enhance the value of the property under her color of title, in the light of decisions in this jurisdiction, there is considerable doubt as to whether or not she could recover therefor." The Court cited, and we urge upon this Court, the decisions of this Court in the case of *Anderson v. Reid*, 14 Appeals D. C. 54 and *Armstrong v. Ashley*, 22 Appeals D. C., 368, affirmed 204 U. S. 272, in support of this position.

5. It is to be noted, as a practical matter, that although the appellant's original complaint did not squarely state a claim for an equitable lien, the appellant, after trial, and in the memorandum submitted to the lower court, pitched her whole case upon the theory of an equitable lien. Obviously, inasmuch as there were no assets in the estate other than those created by the sale of the premises, after

this Court had in the former case affirmed the setting aside of the original transfer of the premises to Mrs. Brady, the only *res* upon which the equitable lien could be fixed were those very assets. However, again recalling the decision of this Court in the former case, and particularly having reference to the mandate of the Court, it is to be pointed out that this Court restricted the decision of the lower court to the extent that "the transfer is void only as against appellee (Mrs. Games), since it does not appear that anyone else was 'hindered, delayed or defrauded.' " (76 U. S. Appeals D. C. 47, 48). (Italics supplied)

This Court could only have meant one thing by its language; that is, that the fund made available from the sale of the property was to be held only for the satisfaction of Mrs. Games' claim. Since Mrs. Games was the only person defrauded by the original transfer of the real estate, and since the real estate was the only asset in the case, the monies received from the sale of that real estate are subject only to the claims of Mrs. Games and the administration expenses, and may not now be said to be the object of an equitable lien by the appellant.

CONCLUSION

In the opinion of counsel for the appellee, the lower Court, having reached a very equitable solution in allowing the claim of the appellant for dower and in allowing the claim for monies expended in satisfying a lien against the real estate, should be confirmed in its opinions as to all other matters in the case.

Respectfully submitted,

WILLIAM T. HANNAN

Attorney for Appellee Cantrel